U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34061375

Date: NOV. 8, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a martial arts athlete and teacher, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required, and that the Petitioner is coming to the United States to continue working in the area of claimed extraordinary ability. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner states that he is a "two-time [redacted] World Champion, with sixteen (16) pro Mixed Martial Arts (MMA) wins." Since 2018, the Petitioner has spent much of his time in the United States in nonimmigrant status as a P-1 athlete and, later, a B-1/B-2 visitor. Since 2022, he has competed and coached for an MMA school and professional team based in [redacted] California. The matter before us involves the second of three immigrant petitions that the Petitioner filed on his own behalf, each time seeking the same classification.[1]

The petition must include clear evidence that the individual is coming to the United States to continue work in the area of expertise. 8 C.F.R. § 204.5(h)(5). The Director concluded that the Petitioner had not satisfied this requirement. We disagree.

On Form I-140, under "Occupation," the Petitioner stated [redacted] Athlete." Although the Petitioner submitted a detailed statement about his employment plans, the Director concluded that the Petitioner had not established that he is "coming to the U.S. to continue working as a [redacted] Athlete in the field of [redacted] because the Petitioner is "a coach and participated in MMA." The Director interpreted this distinction as a change in occupation.

But on the same petition form, under "Nontechnical Job Description," the Petitioner indicated that he would be "competing in Mixed Martial Arts (MMA) events" and "[t]raining athletes." The record indicates that MMA incorporates techniques from several different martial arts, including [redacted] and that the Petitioner uses [redacted] techniques when training MMA athletes. The record shows that, in the past, the Petitioner has competed and coached in both [redacted] and MMA. The record's various references to MMA do not represent a departure from the Petitioner's previous experience or intended future work, and do not warrant denial of the petition.

The Petitioner initially claimed to have received a major, internationally recognized award, but he does not pursue this claim on appeal. Therefore, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied nine of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;

[1] The third and most recent petition, with receipt number [redacted] was approved October 23, 2024.

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner met two of the criteria, relating to prizes or awards and participation as a judge. On appeal, the Petitioner asserts that he also meets six other criteria, pertaining to memberships; published material; leading or critical role; remuneration; and commercial success. The Petitioner acknowledges that he has not satisfied the remaining two criteria relating to contributions and display.

Upon review of the record, we conclude that the Petitioner has satisfied the requirements of at least one more criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submitted copies of 47 exhibits, mostly web printouts, dating from between 2013 and 2022. In the denial notice, the Director stated that the Petitioner submitted "altered" images rather than printouts directly from the websites. The Director did not fully explain this conclusion.

The Petitioner submitted printouts from *SimilarWeb* providing traffic statistics for some, but not all, of the websites where the articles appeared. The printouts include not only estimated numbers of visits to the websites, but also rankings by category. The highest such ranking is for *MMA Fighting*, which ranked at #2 under "Sports – Martial Arts." The *MMA Fighting* article described the Petitioner as one of the [redacted]

The above information indicates that *MMA Fighting* is major media within the Petitioner's field, which satisfies the requirements of the criterion.

The Director objected to this article and others because they concern the Petitioner's work in MMA rather than specifically in [redacted] But as we noted further above, the Petitioner has, from the outset, claimed that his extraordinary ability encompasses both [redacted] and MMA.

The Director also disputed the reliability of *SimilarWeb*, stating it "is a tool to broadly determine estimations of internet domain traffic or visits and/or rankings, and/or pageviews, not to determine a publication's circulation, readership and/or viewership." But for an online publication that is available without a paid subscription, the number of page visits may, in some instances, be a justifiable measure of readership. Here, the category rankings compare a given website with others in the same category and the same country.

The available evidence meets the Petitioner's burden of proof to satisfy the requirements of the criterion.

Because the above discussion shows that the Petitioner has satisfied at least three of the criteria at 8 C.F.R. § 204.5(h)(3), which is sufficient for the case to proceed to a final merits determination, we need not discuss the other claimed criteria, and therefore reserve discussion on them.[2]

As discussed above, we conclude that the Petitioner submitted the required initial evidence. The next step is to determine whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim; that he is one of the small percentage at the very top of the field of endeavor; and that his achievements have been recognized in the field through extensive documentation. A final merits determination involves analyzing an individual's accomplishments and weighing the totality of the evidence to determine if their successes are sufficient to demonstrate extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20, *and see generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(2).

We will remand the matter in order for the Director to make a final merits determination.

In doing so, the Director must bear in mind that the determination involves consideration of the totality of the record, rather than simply re-evaluating the evidence submitted regarding the individual underlying criteria. The Director must determine whether the record as a whole shows that the Petitioner has achieved sustained national or international acclaim.

III. CONCLUSION

We will remand the matter to the Director for a final merits determination.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).